

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KELLI GRAY and all others
similarly situated,

Plaintiffs,

v.

SUTTELL & ASSOCIATES; MIDLAND
FUNDING, LLC; MARK T. CASE and
JANE DOE CASE, husband and wife;
and KAREN HAMMER and JOHN DOE
HAMMER,

Defendants.

NO. CV-09-251-EFS

**ORDER DENYING DEFENDANTS'
MOTIONS FOR RECONSIDERATION
RE: BRENT INJUNCTION**

EVA LAUBER, DANE SCOTT, SCOTT
BOOLEN, JOEL FINCH, and all
others similarly situated,

Plaintiffs,

v.

ENCORE CAPITAL GROUP, INC.;
MIDLAND FUNDING, LLC; MIDLAND
CREDIT MANAGEMENT, INC.; SUTTELL
& HAMMER, PS.; MARK T. CASE and
JANE DOE CASE, husband and wife;
MALISA L. GURULE and JOHN DOE
GURULE; KAREN HAMMER and ISAAC
HAMMER, wife and husband;
WILLIAM SUTTELL and JANE DOE
SUTTELL, husband and wife;

Defendants.

Before the Court, without oral argument, is Defendants Suttell &
Associates, P.S., Suttell & Hammer, P.S., Mark T. Case, Jane Doe Case,
Malisa L. Gurule, John Doe Gurule, Karen Hammer, and Isaac Hammer's
ORDER * 1

1 ("Suttell Defendants") Motion for Reconsideration Re: *Brent* Injunction,
2 ECF No. [300](#), and Encore Capital Group, Inc., Midland Funding, LLC,
3 Midland Credit Management, Inc.'s ("Encore Defendants") Motion for
4 Reconsideration of the Court's Order Entering Rulings from the March 23,
5 2011 Hearing, ECF No. [303](#). All Defendants move the Court for an order
6 reconsidering and amending certain language in the Order Entering Rulings
7 from March 23, 2011 Hearing, ECF No. [299](#), which, in the wake of the *Brent*
8 Injunction,¹ permitted Plaintiffs to pursue:

9 1) Attorneys Fees, Licensing, and Statute of Limitations Claims
10 against Suttell and Encore Defendants, and 2) Affidavit Claims
against Suttell.

11 ECF No. [299](#). Defendants take issue with the Court's interpretation of
12 the *Brent* injunction to allow Plaintiffs to pursue third-party claims
13 arising out of or related to the use of allegedly deceptive affidavits
14 prepared by Midland and its affiliates. Instead, the Defendants suggest

15 ¹ On March 11, 2011, the district court in the Northern District of
16 Ohio issued a preliminary injunction in *Midland Funding, LLC v. Brent*,
17 No. 3:08-CV-1434-DAK (N.D. Ohio) ("*Brent*"). The *Brent* Injunction
18 prohibits individuals from:
19

20 participating as class members in any lawsuit in any forum, or
21 otherwise filing, intervening in, commencing, prosecuting,
22 continuing and/or litigating any lawsuit in any forum arising
23 out of or relating to the use of affidavits in debt collection
24 lawsuits by Encore Capital Group, Inc., and/or its subsidiaries
25 and affiliates, including but not limited to Midland Credit
Management, Inc., Midland Funding LLC, MRC Receivables Corp.,
and Midland Funding NCC-2 Corp., unless and until such time as
the Class member involved in such action timely and validly
excludes himself or herself from the class to pursue individual
relief.

26 ECF No. 272-3.

1 that the *Brent* Injunction precludes Plaintiffs from pursuing claims
2 against the Suttell Defendants - the law firm and lawyers who filed the
3 allegedly false affidavits in state court.

4 On May 17, 2011, the district court in the Northern District of Ohio
5 clarified this very issue in *Brent*:

6 [Intervenor] is concerned that the filing of claims against
7 third parties, such as a local "collection mill" law firm that
8 uses a fraudulent affidavit prepared by Midland in state court
9 will be barred. The Court hereby clarifies that the injunction
10 does not apply to persons or entities that are not affiliated
11 with Encore or Midland.

12 ECF No. 343-1, at 9-10 (emphasis added). The Court required additional
13 briefing as to how the *Brent* Court's clarification affects this
14 case. ECF No. 347.

15 Based on this language, all Defendants concede that the litigation
16 of Affidavit Claims against the Suttell Defendants will not violate the
17 injunction. ECF Nos. [362](#) & [363](#). The Court agrees. Accordingly, **IT IS**
18 **HEREBY ORDERED:**

19 1. The Court's April 15, 2011 Order Entering Rulings from March 23,
20 2011, ECF No. [299](#), remains in effect: Plaintiffs may pursue Affidavit
21 Claims against the Suttell Defendants.

22 2. The Suttell Defendants' Motion for Reconsideration Re: *Brent*
23 Injunction, **ECF No. [300](#)**, is **DENIED**.

24 3. The Encore Defendants' Motion for Reconsideration of the Court's
25 Order Entering Rulings from the March 23, 2011 Hearing, **ECF No. [303](#)**, is

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1 **DENIED.**

2 **IT IS SO ORDERED.** The District Court Executive is directed to enter
3 this Order and distribute copies to counsel.

4 **DATED** this 14th day of June 2011.

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6
7 s/Edward F. Shea

8 EDWARD F. SHEA

9 United States District Judge

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